

**DIR-SDD-1883-HA-CISO**

**Hosting Services Agreement**

This Identity Services Agreement is between ARC Government Solutions, Inc., a Texas Corporation ("**ARC**") and the entity signing below (**DIR**), and is dated as of the date of last signature.

- 1) **SECURITY SERVICE.** This agreement describes the security services provided by ARC for Identity as a Service (**IDaaS**), which may include functionality such as the following, depending upon what is ordered:

- Identity Administration / Identity Management;
- Privileged Identity Management;
- Access Request;
- Access Management;
- Access Governance (e.g. Access Certification / Attestation);
- Directory Services;
- Role Engineering and Role Governance;
- Data Loss Prevention

ARC will provide this functionality through its server environment and through the use of hardware and/or software appliances (provided by ARC) located at Vendor's site (collectively **Service**) all under the terms below. This agreement contemplates one or more orders for the Services, which orders are governed by the terms of this agreement and will describe the Services ordered in more detail.

2) **USE OF SERVICES.**

- a). **ARC Responsibilities.** ARC will make the Services available, *except for* (i) scheduled outages, or (ii) unavailability caused by force majeure, and (iii) provide customer support for the Services agreed upon in the corresponding service order, on a monthly basis.
- b). **Customer Responsibilities.** Customer (i) is solely responsible for Customer Data, (ii) must use commercially reasonable efforts to prevent unauthorized access to the Services, and notify ARC promptly of any such unauthorized access, and (iii) may use the Services only in accordance with its [user guide] and applicable government law and rules.

Customer *may not* (i) sell, resell, rent or lease the Services, (ii) use the Services to store or transmit infringing, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party rights, (iii) interfere with or disrupt the integrity or performance of the Services, or (iv) attempt to gain unauthorized access to the Services or their related systems or networks.

- 3) **PAYMENT TERMS.** Payment shall be in accordance with Section 8J of DIR Contract Number DIR-SDD-1883.

4) **WARRANTY/SERVICE LEVEL AGREEMENT and REMEDY.**

- a). **Limited Warranty.** ARC warrants to Customer (i) that commercially reasonable efforts will be made to maintain the online availability of the Services for a minimum availability in any given month, excluding scheduled

outages and delays to the extent caused by Customer problems including without limitation Customer technology or Third-Party Software problems, (ii) the functionality of the Services will not materially decrease, (iii) and the customer support will not materially degrade.

- b). **Limited Remedy and Disclaimer.** Customer's exclusive remedy and ARC's sole obligation for breach of the warranty in (a)(i) immediately above will be for ARC to provide a credit (if this agreement is not renewed, then a refund), for all or part of the monthly fee in question; provided that Customer notifies ARC of such breach within 30 days of the end of the month in question. ARC DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT DELAY, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

5) **MUTUAL CONFIDENTIALITY.**

- a). **Definition of Confidential Information.** Except as required in accordance with the Texas Public Information Act, Confidential Information means all information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). ARC's Confidential Information includes the Services.
- b). **Protection of Confidential Information.** The Recipient must use the same degree of care to protect the Confidential Information that it uses to protect its confidential information (in no event less than reasonable care) and not disclose or use any Confidential Information of Discloser for any purpose (other than within the scope of this agreement). The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees, contractors and agents who need such access for purposes consistent with this agreement and who have signed similar confidentiality agreements with the Recipient.
- c). **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser (iii) is received from a third party without breach of any obligation owed to Discloser or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient

may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

## 6) PROPRIETARY RIGHTS.

- a). **Reservation of Rights by ARC.** The software and other technologies provided by ARC in providing the Services are the proprietary property of ARC and its licensors, and all right, title and interest in the software, Services and other technology, including all associated intellectual property rights, remain only with ARC. ARC grants no rights unless expressly provided in this agreement.
- b). **Customer Restrictions.** Customer *may not*:
  - i. Reverse engineer the Services;
  - ii. Remove or modify any proprietary marking or restrictive legends in the Service; or
  - iii. Access the Service to (a) build a competitive product or service, or (b) copy any feature, function or graphic of the Service.
- c). **Customer Data.** All Customer data or information provided by Customer remains the sole property of Customer, as between ARC and Customer (**Customer Data**). Customer grants ARC a non-exclusive term license to use, modify, copy and prepare derivative works of the Customer Data for exclusive purposes of ARC performing under this agreement. Upon a Customer request, no more than once a month, ARC will promptly return to Customer the Customer Data through a database download from Services subscribed to (e.g. database export from the applicable database); any additional exports of data each month will cost \$300 per export.
- d). **Data Protection.** Each party agrees that, in the performance of its respective obligations under this agreement, it shall comply with the provisions below, in relation to all Personal Data:
  - i. All intellectual property rights throughout the world to the Personal Data shall be owned and retained by Customer;
  - ii. ARC will only Process such Personal Data for the purposes necessary for performing its obligations under this Agreement and in accordance with any written instructions given by Customer from time to time provided that such instructions are lawful and compliance with them would not prevent ARC complying with any of its obligations under this agreement;
- e). **Licensed Documentation Subscription Services Agreement.** The ARC provided Services and associated documentation is licensed to Customer as follows: ARC grants Customer a non-exclusive license for the duration of the Services to such material for Customer's internal use solely with the Services.
- f). **Leased Hardware Appliance.** All ARC provided hardware appliances are at all times owned by ARC but leased to Customer for the duration of the subscription and only for use as part of the Services. ARC is responsible for the risk of loss and damage to such appliance while they are on Vendor's site. After all orders have expired or are terminated, Customer may not use or access these

appliances directly. All software on these devices is proprietary and confidential information of ARC or its licensors, and may not be directly accessed or used by Customer.

- g). **Infringement Indemnification.** Indemnification and Infringements shall be in accordance with Section 10A if Appendix A, DIR Contract Number DIR-SDD-1883.

## 7) LIMITATION OF LIABILITY.

- a). **Limitation of Liability.** Limitation of Liability shall be in accordance with Section 10k of DIR Contract Number DIR-SDD-1883.

## 8) TERM, TERMINATION AND SUSPENSION OF SERVICE.

- a). **Term.** This agreement continues until all orders have expired or are terminated. Orders may have specific durations specified on the order (**Term**).
- b). **Mutual Termination for Material Breach.** If either party is in breach of any term of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.
  - i. **Actions upon Termination.**
    - a. Upon any termination as provided in 8(b) above by Customer, ARC must refund any prepaid fees covering the remainder of the Term of that order.
    - b. Upon any termination as provided in 8(b) above by ARC, Customer must pay any unpaid fees covering the remainder of the Term of all orders, and destroy all ARC property and return to ARC all leased hardware appliances (ARC will pay for the cost to transport the appliances back to its offices). Customer upon request will confirm that it has complied with these requirements.
- c). **Return of Customer Data.** After the effective date of termination of the Services, ARC will provide Customer with a database download from the Services subscribed (e.g. database export from the applicable database).
- d). **Suspension of Service for Violations of Law or Policy.** ARC may immediately suspend the Services if it in good faith believes that, as part of using the Services, Customer may have violated a governmental law or rule, or court order. ARC may try to contact Customer in advance, but it is not required to do so.
- e). **Termination for Convenience.** If Customer chooses to terminate services before the end of the Term and for reasons other than Mutual Termination for Material Breach, Customer will be subject to an early termination fee amounting to the total amount of remaining, unbilled services.

- 9) **GOVERNING LAW.** Choice of Law shall be in accordance with Section 4F of DIR Contract Number DIR-SDD-1883.

## 10) MISCELLANEOUS OTHER TERMS.

This agreement constitutes the agreement between the parties, and supersedes all prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. No modification or waiver of any term of this agreement is effective unless both parties sign it. Neither party may assign or transfer this agreement or an order to a third party, except that the agreement with all orders may be

assigned as part of a merger, or sale of all or substantially all of the business or assets, of a party. The parties are independent contractors with respect to each other. If any term of this agreement is invalid or unenforceable, the other terms remain in effect. ARC rejects additional or conflicting terms of a form purchasing document. If there is an inconsistency between this agreement and an order, the order prevails. Any terms that by their nature survive termination or expiration of this

agreement, will survive. With the prior written consent of Customer, ARC may use Customer's name and logo in customer lists and related promotional materials describing Customer as a customer of ARC's Identity as a Service, which use must be in accordance with Customer's trademark guidelines and policies.

**Department of Information Resources ("Customer")**

Signature on file

**Name:** Edward Block

**Title:** Chief Information Security Officer

**Date:** 6/30/2016

**Office of General Counsel:** signature on file 6/28/16

**ARC Government Solutions, Inc.**

signature on file

**Name:** Ryan Grant

**Title:** President

**Date:** 6/27/16